

May 22, 2018

**Via ECF**

Honorable Lorna G. Schofield  
U.S. District Court  
Southern District of New York  
Thurgood Marshall Courthouse  
40 Foley Square  
New York, NY 10007

Re: *In re Foreign Exchange Benchmark Rates Antitrust Litigation*  
Case No. 1:13-cv-07789-LGS (S.D.N.Y.)

Dear Judge Schofield:

Pursuant to the Court's March 12, 2018 Order (ECF No. 991), class counsel write in advance of the Fairness Hearing, scheduled for May 23, 2018 at 4:00 p.m., to provide the Court with estimates of the participation rate in the claims process for the proposed Settlement Agreements. The estimates (i) are based on available data from claims received, as the Claims Administrator has not yet validated all received claims at this time and (ii) include estimated participation from entities to which class counsel has authorized an extension of the claims filing deadline pursuant to paragraph 21 of the Second Superseding Order Approving the Form and Manner of Notice (ECF No. 883) (the "Notice Order").

We estimate that there are approximately 60,000 claims out of settlement classes that consist of approximately 200,000 class members. The participation rate, measured by number of claimants, is therefore 30%. Roughly 6% of the claims submitted include FX Exchange-Traded Instruments. The participation rate, measured by eligible claim volume, is 32%-37%. Assuming a participation rate by volume of 37%, claimants are projected to recover between 89% and 116% of estimated single damages for the litigation class period (December 1, 2007-December 31, 2013).<sup>1</sup> *See also* Exhibit 1.

We believe the response rate is "extremely positive" and weighs in favor of settlement approval. *Levinson v. About.Com Inc.*, No. 02 Civ. 2222 DAB, 2010 WL 4159490, at \*2 (S.D.N.Y. Oct. 7, 2010) (40% response rate for a class of 1,678 members); *see also In re Initial Pub. Offering Sec. Litig.*, No. 21 MC 92 (SAS), 2010 WL 2834894, at \*1 (S.D.N.Y. July 7, 2010) (accepting testimony that "response rates vary greatly depending on a variety of factors" and can "range from less than five percent to more than twenty percent"; "the 5.5% response rate in this action is not outside the norm").

Class counsel respectfully request that the Court set July 11, 2018 as the deadline for class counsel to submit proposed orders and updated statistics on the participation rate in the claims process. Pursuant to the Notice Order, class counsel may authorize extensions of the claims filing deadline for additional entities in appropriate circumstances in order to promote participation in the settlements.

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<sup>1</sup> Class counsel previously estimated damages for the litigation class period of \$5.4 billion to \$7 billion (before trebling). *See* Hr'g Tr. 7:16-8:13 (Sept. 5, 2017).

Class counsel also submit as Exhibits to this letter the following demonstratives we anticipate referring to during the Fairness Hearing.

Exhibit 1 Gross Settlement Fund as a Percentage of Damages Recovered

Exhibit 2 Net Settlement Fund

Exhibit 3 Attorneys' Fee Awards in Megafund Antitrust Class Action Cases

Respectfully submitted,

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IN RE FOREIGN EXCHANGE BENCHMARK  
RATES ANTITRUST LITIGATION

No. 1:13-cv-7789-LGS

EXHIBIT 1

**GROSS SETTLEMENT FUND AS A PERCENTAGE  
OF DAMAGES RECOVERED**

**I. Class-wide damages for the settlement class period (January 1, 2003 through December 15, 2015)**

- Gross Settlement Fund = \$2,310,275,000
- Class-wide single damages for the settlement class period estimated at \$8 billion to \$10 billion
- Percentage of damages recovered = 23% to 29%
- Percentage recovery, assuming 37% claims rate by volume = 62% to 78%

**II. Class-wide damages post-Court's September 20, 2016 Order (ECF No. 661) (December 1, 2007 through December 31, 2013)**

- Court's September 20, 2016 ruling limited claims to December 1, 2007 through December 31, 2013
- As a result, class-wide single damages are adjusted to \$5.4 billion to \$7 billion
- Percentage of damages recovered = 33% to 43%
- Percentage recovery, assuming 37% claims rate by volume = 89% to 116%

IN RE FOREIGN EXCHANGE BENCHMARK  
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EXHIBIT 2

**NET SETTLEMENT FUND**

|  |                 |
|--|-----------------|
| Gross Settlement Fund  | \$2,310,275,000 |
| Interest earned net of taxes (estimated through June 30, 2019) | \$54,000,000    |
| Estimated notice and administration expenses                   | \$(12,000,000)  |
| Attorneys' Fees (16.51% of Gross Settlement Fund)              | \$(381,353,830) |
| Litigation expenses  | \$(22,495,670)  |
| Estimated Net Settlement Fund                                  | \$1,948,425,500 |
| Estimated Net Settlement Fund as a % of Gross Settlement Fund  | 84.3%           |

IN RE FOREIGN EXCHANGE BENCHMARK  
RATES ANTITRUST LITIGATION

No. 1:13-cv-7789-LGS

EXHIBIT 3

**ATTORNEYS' FEE AWARDS IN MEGAFUND ANTITRUST CLASS ACTION CASES**

| <u>No.</u> | <u>Case</u>   | <u>Settlement<br/>Amount</u>                      | <u>Fee Percentage</u> | <u>Lodestar<br/>Multiplier</u> |
|------------|---|---|-----------------------|--------------------------------|
| 1          | <i>In re Payment Card Interchange Fee &amp; Merch. Disc. Antitrust Litig.</i> , 991 F. Supp. 2d 437, 445, 448 (E.D.N.Y. 2014) | \$5.7 billion                                     | 9.56%                 | 3.41                           |
| 2          | <i>In re Visa Check/Mastermoney Antitrust Litig.</i> , 297 F. Supp. 2d 503, 509, 524 (E.D.N.Y. 2003)                          | \$3.38 billion                                    | 6.5%                  | 3.5                            |
| 3          | <i>In re Credit Default Swaps Antitrust Litig.</i> , 2016 WL 2731524, at *17 (S.D.N.Y. Apr. 26, 2016)                         | \$1.86 billion                                    | 13.61%                | 6.2                            |
| 4          | <i>In re Air Cargo Shipping Servs. Antitrust Cases</i> , No. 06-MD-1775 (JG)(VVP) (E.D.N.Y.):                                 |   |                       |                                |
|            | <i>In re Air Cargo Shipping Servs. Antitrust Litig.</i> , 2009 WL 3077396, at *16 (Sept. 25, 2009)                            | \$85 million                                      | 15%                   | 1.54                           |
|            | <i>In re Air Cargo Shipping Servs. Antitrust Litig.</i> , 2011 WL 2909162, at *6 (July 15, 2011)                              | \$153.8 million<br>(after reduction for opt-outs) | 25%                   | 0.63                           |

|   |  |  |                             |                   |
|---|--|--|-----------------------------|-------------------|
|   | <i>In re Air Cargo Shipping Servs. Antitrust Litig.</i> , 2012 WL 3138596, at *3 (Aug. 2, 2012)                    | \$198.7 million<br>(after reduction for opt-outs)          | 25%                         | 1.11              |
|   |  | \$23.7 million<br>(value from two opt-out escrow accounts) | 20%                         | -                 |
|   | <i>In re Air Cargo Shipping Servs. Antitrust Litig.</i> , 2015 WL 5918273, at *6 (Oct. 9, 2015)                    | \$332.5 million  | 22%                         | 1.45              |
|   | <i>In re Air Cargo Shipping Servs. Antitrust Litig.</i> , ECF No. 2484, at 2 (Oct. 25, 2016)                       | \$387.85 million   | 25%                         | 1.99 <sup>2</sup> |
|   | Total:   | \$1.18 billion   | 23.3%                       | 1.99              |
| 5 | <i>In re TFT-LCD (Flat Panel) Antitrust Litig.</i> , MDL No. 1827, 2013 WL 1365900, at *7 (N.D. Cal. Apr. 3, 2013) | \$1.08 billion   | 28.6%                       | ≈2.5              |
| 6 | <i>In re NASDAQ Mkt.-Makers Antitrust Litig.</i> , 187 F.R.D. 465, 489 (S.D.N.Y. 1998)                             | \$1 billion  | 14%                         | 4.0               |
|   | \$ Billion Antitrust Cases:  |  | Average=15.93% <sup>3</sup> | Average=3.6       |

<sup>2</sup> See *In re Air Cargo Shipping Servs. Antitrust Litig.*, ECF No. 2472-1, at 19 (Aug. 19, 2016).

<sup>3</sup> This average is calculated using the total weighted percentage average from *Air Cargo*, rather than the separate fee percentages.

| <u>No.</u> | <u>Case</u>  | <u>Settlement<br/>Amount (in<br/>millions)</u> | <u>Fee Percentage</u> | <u>Lodestar<br/>Multiplier</u> |
|------------|--|--|-----------------------|--------------------------------|
| 1          | <i>In re: Urethane Antitrust Cases</i> , No. 04-md-1616 (D. Kan.):   |  |                       |                                |
|            | <i>In re: Urethane Antitrust Litig.</i> , ECF No. 995 (July 22, 2009)  | \$58.9 <sup>4</sup>                            | 33.33%                | -                              |
|            | <i>In re: Urethane Antitrust Litig.</i> , ECF No. 2210 (Dec. 13, 2011)   | \$84   | 33.33%                | -                              |
|            | <i>In re: Urethane Antitrust Litig.</i> , 2016 WL 4060156, at *8 (July 29, 2016)   | \$835  | 33.33%                | 3.23                           |
|            | Total:   | \$977.9  | 33.33%                | 3.23                           |
| 2          | <i>In re Automotive Parts Antitrust Cases</i> , No. 12-md-02311 (E.D. Mich.) (End Payer Plaintiffs):   |  |                       |                                |
|            | <i>In re Automotive Parts Antitrust Litig.</i> , 2017 WL 3525415, at *3, *4 n.3 (July 10, 2017)  | \$224.7  | 20% <sup>5</sup>      | -                              |
|            | <i>In re Automotive Parts Antitrust Litig.</i> , 2017 WL 3525415, at *4 (July 10, 2017)  | \$379.4 <sup>6</sup>                           | 20%                   | 1.11                           |
|            | Total:   | \$604.1  | 20%                   | 1.11                           |
| 3          | <i>Dahl v. Bain Capital Partners, LLC</i> , No. 07-cv-12388, ECF No. 1095 (D. Mass. Feb 2, 2015)   | \$590.5  | 33%                   | 2.43                           |
| 4          | <i>In re Cathode Ray Tube (CRT) Antitrust Litig.</i> , Case No. C-07-5944, MDL No. 1917, ECF No. 4740, at 2 (N.D. Cal. Aug. 3, 2016) (Indirect Purchaser Plaintiffs) | \$576.75                                       | 27.5%                 | 1.96                           |
| 5          | <i>In re Vitamins Antitrust Cases</i> , No. MDL 1285 (D.D.C.):   |  |                       |                                |
|            | <i>In re Vitamins Antitrust Litig.</i> , 2001 WL 34312839, at *10 (July 16, 2001)  | \$359.4<br>(Vitamin Products)                  | 34.06%                | -                              |

<sup>4</sup> Settlement amount includes accrued interest.

<sup>5</sup> See *In re: Automotive Parts Antitrust Litig.*, No. 2:12-cv-00103-MOB-MKM, ECF No. 498, at 2 (June 20, 2016) (awarding a partial attorney fee of 10% of the settlement proceeds from the Round 1 settlements and ordering supplemental briefing on attorneys' fees); ECF No. 545 (Dec. 5, 2016) (awarding a further partial attorney fee of 10% of the settlement proceeds from the Round 1 settlements).

<sup>6</sup> The court awarded attorneys' fees from the net settlement fund, deducting \$941,878.09 in expenses prior to calculating its fee award.

|   |  |  |       |      |
|---|--|--|-------|------|
|   |  | Settlement Fund)                           |       |      |
|   |  | \$5<br>(Choline Chloride Settlement Fund)  | 15%   | -    |
|   | <i>In re Vitamins Antitrust Litig.</i> , 2004 WL 6080000, at *4 (Oct. 22, 2004)  | \$172.43                                   | 27%   | -    |
|   | Total:   | \$536.83                                   | 31.6% | -    |
| 6 | <i>King Drug Co. of Florence, Inc. v. Cephalon, Inc.</i> , No. 2:06-cv-1797-MSG, ECF No. 870, at 8, 10 (E.D. Pa. Oct. 15, 2015)                  | \$512                                      | 27.5% | 4.12 |
| 7 | <i>Spartanburg Regional Health Servs. District, Inc. v. Hillenbrand Indus., Inc.</i> , No. 03-CV-2141, ECF No. 377, at 11 (D.S.C. Aug. 15, 2006) | \$468.6<br>(post-opt out settlement value) | 25%   | 6.22 |
| 8 | <i>In re High-Tech Employee Antitrust Litig.</i> , No. 11-CV-02509-LHK, 2015 WL 5158730, at *11, *16 (N.D. Cal. Sept. 2, 2015) <sup>7</sup>      | \$435                                      | 10.5% | 2.5  |
| 9 | <i>In re Polyurethane Foam Antitrust Cases</i> , No. 1:10-MD-2196 (N.D. Ohio) (Direct Purchaser Plaintiffs):                                     |  |       |      |
|   | <i>In re Polyurethane Foam Antitrust Litig.</i> , 2015 WL 1639269, at *7 (Feb. 26, 2015), <i>appeal dismissed</i> (Dec. 4, 2015) <sup>8</sup>    | \$147.8                                    | 30%   | 0.85 |
|   | <i>In re Polyurethane Foam Antitrust Litig.</i> , 135 F. Supp. 3d 679, 691 (N.D. Ohio)   | \$275.5                                    | 20%   | 1.57 |
|   | Total:   | \$433.1                                    | 23.6% | 1.57 |

<sup>7</sup> The court had already awarded an attorneys' fee award from a prior partial settlement, which is included in the settlement amount, the fee percentage, and the lodestar reflected in the chart.

<sup>8</sup> The court had already awarded an attorneys' fee award from a prior partial settlement – awarding 30% from a \$9.8 million settlement. *Id.*, at \*2. This partial settlement is included in the total settlement amount and percentage awarded for *In re Polyurethane Foam*.

|    |   |          |        |                                 |
|----|---|----------|--------|---------------------------------|
| 10 | <i>In re Currency Conv. Fee Antitrust Litig.</i> , 263 F.R.D. 110 (S.D.N.Y. 2009)   | \$336    | 15.25% | 1.6                             |
| 11 | <i>In re Dynamic Random Access Memory (DRAM) Antitrust Litig.</i> , No. 4:02-md-01486-PJH, ECF No. 1682 (N.D. Cal. Aug. 16, 2007) (Direct Purchaser Plaintiffs)         | \$326    | 25%    | 2.3 <sup>9</sup>                |
| 12 | <i>In re Dynamic Random Access Memory (DRAM) Antitrust Litig.</i> , No. 4:02-md-01486-PJH, ECF No. 2234, at 3 (N.D. Cal. June 27, 2014) (Indirect Purchaser Plaintiffs) | \$310.72 | 25.2%  | 0.82                            |
| 13 | <i>Sullivan v. Barclays PLC</i> , No. 1:13-cv-02811-PKC, ECF No. 425, at 2 (S.D.N.Y. May 18, 2018)  | \$309    | 22.24% | 1.36 <sup>10</sup>              |
| 14 | <i>In re Southeastern Milk Antitrust Cases</i> , No. 2:08-md-1000 (E.D. Tenn.):   |          |        |                                 |
|    | <i>In re Se. Milk Antitrust Litig.</i> , ECF No. 1329, at 9 (July 11, 2012)   | \$145    | 33.33% | 1.03                            |
|    | <i>In re Se. Milk Antitrust Litig.</i> , 2013 WL 2155387, at *8 (May 17, 2013)  | \$158.6  | 33.33% | 1.9                             |
|    | Total:  | \$303.6  | 33.33% | 1.9                             |
| 15 | <i>Sullivan v. DB Investments, Inc.</i> , No. 04-02819 (D.N.J. May 22, 2008), <i>affirmed by, Sullivan v. DB Investments, Inc.</i> , 667 F.3d 273 (3d Cir. 2011)        | \$295    | 25%    | Approximately 3.5 <sup>11</sup> |
| 16 | <i>Precision Assocs., Inc. v. Panalpina World Transp. (Holding) Ltd. Cases</i> , No. 08-cv-42 (JG) (VVP) (E.D.N.Y.):  |          |        |                                 |
|    | <i>Precision Assocs., Inc. v. Panalpina World Transp. (Holding) Ltd.</i> , 2013 WL 4525323, at *17 (Aug. 27, 2013)  | \$112.4  | 15%    | 1.3                             |
|    | <i>Precision Assocs., Inc. v. Panalpina World Transport (Holding) Ltd.</i> , 2015 WL 6964973, at *7 (Nov. 10, 2015)   | \$168.9  | 25%    | 0.85                            |

<sup>9</sup> See *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. 4:02-md-01486-PJH, ECF No. 2155, at 26 (N.D. Cal. Nov. 05, 2013).

<sup>10</sup> See *Sullivan v. Barclays PLC*, No. 1:13-cv-02811-PKC, ECF No. 402, at 24 (S.D.N.Y. Mar. 23, 2018).

<sup>11</sup> See *Sullivan v. DB Investments, Inc.*, No. 2:04-02819 (SRC) (MAS), ECF No. 169-1, at 34 (D.N.J. Jan. 11, 2008).

|    |   |          |        |                                  |
|----|---|----------|--------|----------------------------------|
|    | Total:  | \$281.2  | 21%    | 0.85                             |
| 17 | <i>In re Tricor Direct Purchaser Antitrust Litig.</i> , No. 05-340 (SLR), ECF No. 543, at 9-10 (D. Del. Apr. 23, 2009)  | \$250    | 33.33% | 3.93                             |
| 18 | <i>Dial Corp. v. News Corp.</i> , 317 F.R.D. 426, 438 (S.D.N.Y. 2016)   | \$244    | 20%    | 1.75                             |
| 19 | <i>In re Buspirone Antitrust Litig.</i> , No. 1:01-cv-07951 (JGK), ECF No. 22, at 5 (S.D.N.Y. Apr. 11, 2003)  | \$220    | 33.33% | Approximately 8.46 <sup>12</sup> |
| 20 | <i>In re Cathode Ray Tube (CRT) Antitrust Cases</i> , No. 07-cv-5944 (N.D. Cal.) (Direct Purchaser Plaintiffs):   |          |        |                                  |
|    | <i>In re Cathode Ray Tube (CRT) Antitrust Litig.</i> , 2016 WL 183285, at *3 (Jan. 14, 2016)  | \$127.45 | 30%    | 0.88                             |
|    | <i>In re Cathode Ray Tube (CRT) Antitrust Litig.</i> , ECF No. 5169, at 3 (June 8, 2017)  | \$84.75  | 30%    | 1.15                             |
|    | Total:  | \$212.2  | 30%    | 1.15                             |
| 21 | <i>In re: National Collegiate Athletic Assoc. Athletic Grant-In-Aid Cap Antitrust Litig.</i> , No. 4:14-md-2541, 2017 WL 6040065, at *1 (N.D. Cal. Dec. 6, 2017) <sup>13</sup>              | \$208.6  | 21%    | 3.66                             |
| 22 | <i>In re Linerboard Antitrust Litig.</i> , No. CIV.A. 98-5055, 2004 WL 1221350, at *19 (E.D. Pa. June 2, 2004), <i>amended</i> , No. CIV.A.98-5055, 2004 WL 1240775 (E.D. Pa. June 4, 2004) | \$202.6  | 30%    | 2.66                             |
| 23 | <i>In re Neurontin Antitrust Litig.</i> , No. 2:02-cv-1830, ECF No. 114, at 7 (D.N.J. Aug. 6, 2014)   | \$190    | 33.33% | 1.99                             |
| 24 | <i>In re Optical Disk Drive Prods. Antitrust Cases</i> , No. 3:10-md-2143 RS (N.D. Cal.) (Indirect Purchaser Plaintiffs):   |          |        |                                  |
|    | <i>In re Optical Disk Drive Prods. Antitrust Litig.</i> , 2016 WL 7364803, at *6 (Dec. 19,  | \$124.5  | 25%    | 1.29                             |

<sup>12</sup> See *Nichols v. SmithKline Beecham Corp.*, No. Civ.A.00-6222, 2005 WL 950616, at \*24 (E.D. Pa. Apr. 22, 2005).

<sup>13</sup> Appeal filed, *In re: Darrin Duncan v. NCAA*, No. 18-15054 (9th Cir.).

|    |  |          |                              |                    |
|----|--|----------|------------------------------|--------------------|
|    | 2016)  |          |                              |                    |
|    | <i>In re Optical Disk Drive Prods. Antitrust Litig.</i> , ECF No. 2691, at 9 (Nov. 7, 2017)                                  | \$55.5   | 21%                          | 1.53               |
|    | Total:   | \$180    | 23.8%                        | 1.53               |
| 25 | <i>In re Relafen Antitrust Litig.</i> , No. 01-12239, ECF No. 297, at 7 (D. Mass. Apr. 9, 2004)                              | \$175    | 21%                          | 4.88 <sup>14</sup> |
| 26 | <i>Standard Iron Works v. Arcelormittal</i> , No. 1:08-cv-05214, ECF. No. 539, at 2 (N.D. Ill. 2014)                         | \$163.9  | 33%                          | 1.97               |
| 27 | <i>In re Titanium Dioxide Antitrust Litig.</i> , No. 10-CV-00318 (RDB), 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013)        | \$163.5  | 33.33%                       | 2.39 <sup>15</sup> |
| 28 | <i>In re Polyurethane Foam Antitrust Litig.</i> , 168 F. Supp. 3d 985, 1013 (N.D. Ohio 2016) (Indirect Purchaser Plaintiffs) | \$151.25 | 24%                          | 1.34               |
| 29 | <i>In re Flonase Antitrust Litig.</i> , 951 F. Supp. 2d 739, 749 (E.D. Pa. 2013)   | \$150    | 33.33%                       | 2.99               |
|    | Megafund <sup>16</sup> Antitrust Cases:  |          | Average=24.69% <sup>17</sup> | Average=2.81       |

<sup>14</sup> See *In re Relafen Antitrust Litig.*, No. 01-12239, ECF No. 293-3, at 4 (D. Mass. Apr. 2, 2004).

<sup>15</sup> See *In re Titanium Dioxide Antitrust Litig.*, No. 10-CV-00318 (RDB), ECF No. 546-1, at 2 (D. Md. Oct. 18, 2013).

<sup>16</sup> “Megafund” refers to cases achieving settlements over \$100 million.

<sup>17</sup> This average also includes the weighted average from cases with several partial settlements.